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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/018,241	12/07/2001	Enrico Talmon	1926	8827

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103 East Neck Road
Huntington, NY 11743

EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 12/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/018,241

Applicant(s)

TALMON, ENRICO

Examiner

Robin Hylton

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 13-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the plastic and rubber material of the lid must be shown in the cross-sectional views or the feature(s) canceled from the claims. No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the plastic and rubber material of the lid in the cross-sectional views as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

3. The abstract of the disclosure is objected to because it is grammatically incorrect, i.e., it is a run-on sentence. Correction is required. See MPEP § 608.01(b).

4. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The title should include at least one technical, or inventive, feature of the claimed instant invention.

5. The disclosure is objected to because of the following informalities: it is unclear how the two vent ribs from a chamber comprising two vent openings since one vent opening is disclosed to be in the top wall of the lid. Appropriate correction is required.

Claim Objections

6. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 1-12 have been renumbered 13-24. Claims 13-24 are objected to because of the following informalities: the claims lack either of the terms "A" or "The" at the beginning of the sentences, the term "drinks" in the preamble of the claims, and "lid" is misspelled in claim 13. Appropriate correction is required.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. Claim 17 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. It is unclear why there are two vent openings in the lid and how the two vent ribs from a chamber comprising two vent openings since one vent opening is disclosed to be in the top wall of the lid.

10. Claims 13-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the claims are rejected for the following reasons:

Art Unit: 3727

The scope of the claims is not clearly defined since a contradiction exists within the body of the claims of whether the subcombination of the lid only or the combination of the lid and the can is being claimed. For instance, in the preamble of the claims, the lid is set forth as being the claimed invention. However, in claim 13, lines 9-11, for instance, the combination of the lid and can is set forth as "substantially permitting reciprocal matching between the ...body and cylindrical mouth". Thus, the claims are considered to be drawn to the **combination** of the lid and the can. If applicant intends to only claim the lid, the claim language should be amended to so reflect this intention.

The use of "it" is confusing since it is unclear what structure is being referred to by the term. It is suggested the noun(s) be used instead of "it".

There is insufficient antecedent basis for the following limitations in the claims:

- In claim 15, lines 4-5, "the opened can";
- In claim 17, line 5, "the two annular ribs"; and
- In claim 19, line 3, "said handle".

It is unclear if "its height" in claim 20 refers to the lid or the rim of the lid.

Claim 22 has two limitations set forth regarding the material and a period separating the limitations.

Claim 23 does not further structurally limit claim 13.

Claim 17 recites the limitation "the two annular ribs" in line 5. There is insufficient antecedent basis for this limitation in the claim.

Claim 19 recites the limitation "said handle" in line 3. There is insufficient antecedent basis for this limitation in the claim.

The structure and/or structural relationships are not clearly set forth in claim 19. Does the lid or the handle enter the can aperture?

Art Unit: 3727

Dependent claims not specifically mentioned are rejected as depending from rejected base claims since they inherently contain the same deficiencies therein.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 13, 14, 16, and 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Tucker (US 5,054,640).

The lid as set forth in claim 1 is made of a single piece (and does not include the structure of the hinged closure 20).

13. Claims 13-15 and 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Blow, Jr. et al. (US 4,098,439).

See figure 1 depicting the concave base 36 and raised rim 26.

14. Claims 13, 14, 21, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Heath (US 5,105,964).

See figures 2 and 4.

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3727

16. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Blow, Jr., Tucker, and Heath.

Blow, Jr., Tucker, and Heath each teach the claimed invention except for is silent regarding the height of the lid and rim. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a height of 8-25,mm to accommodate a conventional can end, since it has been held that discovering an optimum value or range of a result effective variable involves only routine skill in the art.

17. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Blow, Jr., Tucker, and Heath.

Blow, Jr., Tucker, and Heath each teach the claimed invention except for the specific use of rubber material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to rubber, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

18. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tucker in view of Murch (US 1,985,904).

Tucker teaches the claimed lid, including a vent opening substantially in the center of the concave base, but not between the ribs.

Murch teaches it is known to provide a vent opening in the lid sidewall.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a vent opening in the sidewall between the ribs of Tucker. Doing so allows for easier removal of the lid from the associated can by breaking the seal formed therebetween as the lid is lifted off.

Art Unit: 3727

19. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heath in view of Mygatt et al. (US 5,931,332).

Heath teaches the claimed lid except for a handle on the lid.

Mygatt teaches a lid having a handle 43 extending upwardly and initially adhered to the sidewall.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of a handle to the lid of Heath. Doing so aids in removal of the lid and indicates prior removal of the lid from the can.

Allowable Subject Matter

20. Claim 19 appears to be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various closures for resealing opened cans are cited for their disclosures.

22. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (703) 305-3579. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

23. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely

Art Unit: 3727

asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number (703) 305-3579 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (703) 308-1208. The examiner works a flexible schedule, but can normally be reached on Monday - Friday from 8:30 a.m. to 1:30 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young, can be reached on (703) 308-2572.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bemby at (703) 306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

RAH
December 10, 2002


Robin A. Hylton
Patent Examiner
GAU 3727